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NO. 82142-9 (consol. with 82973-0)

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SUPREME COURT OF THE STATE OF WASHINGTON

NANCY NGUYEN WAPLES,

Petitioner,

v.

PETER H. YI, DDS and JANE DOE YI, husband and wife
and their marital community, d/b/a LAKEWOOD DENTAL CLINIC
and PETER H. YI, DDS, PS, a Washington Corporation

Respondents.

and

LINDA CUNNINGHAM and DOWNEY C. CUNNINGHAM,
a marital community,

Appellants,

v.

RONALD F. NICOL, M.D.; VALLEY RADIOLOGISTS, INC., P.S.,
and MULTICARE HEALTH SYSTEM, INC.,
d/b/a COVINGTON MULTICARE CLINIC,

Respondents.

JOINT ANSWER OF RESPONDENTS MULTICARE HEALTH
SYSTEM, INC., D/B/A COVINGTON MULTICARE CLINIC, NICOL,
AND VALLEY RADIOLOGISTS, INC., P.S., TO SUPPLEMENTAL
BRIEF OF AMICUS CURIAE WASHINGTON STATE ASSOCIATION
FOR JUSTICE FOUNDATION

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I. ANSWER TO WSAJF'S "ACCESS TO COURTS" ARGUMENT

Amicus WSAJF interprets *Putman v. Wenatchee Valley Med. Ctr.*, 166 Wn.2d 974, 216 P.3d 374 (2009), as the judicial branch's declaration of war against any legislation that regulates personal injury claims or personal injury litigation. *Putman* cannot be reasonably interpreted in this manner.

According to the Court's explanation of its decision in *Putman*, the problem with RCW 7.70.150's certificate of merit requirement for purposes of Const. art. I, § 10 was that the certificate of merit requirement exposed medical malpractice claimants to dismissal of their cases before they could obtain discovery of facts necessary to obtain an expert opinion. See *Putman*, 166 Wn.2d at 979 ("Obtaining the evidence necessary to obtain a certificate of merit may not be possible prior to discovery"). The *Putman* majority declared RCW 7.70.150 unconstitutional not because it imposed a burden on access to courts, but because it "*unduly* burdens the right of medical malpractice plaintiffs *to conduct discovery* and, *therefore*, violates their right to access courts." 166 Wn.2d at 985 (italics supplied). The Court presumably means what it says, and does not idly choose such adverbs as "unduly" when it issues a decision declaring a legislative enactment unconstitutional, particularly a measure that was supported (initially, at least) by the plaintiff's bar.

In contrast, the notice of intent requirement under RCW 7.70.100(1) does not impose an undue burden on medical malpractice claimants' right of access to court, as construed in *Putman*. The statute does not require a plaintiff to produce evidence or surmount any other meaningful barrier in order to commence suit. It imposes no burden at all on any right to conduct discovery.¹ The majority's rationale in *Putman* does not provide a template for invalidating RCW 7.70.100(1) under Const. art. I, § 10.

II. ANSWER TO WSAJF'S "SEPARATION OF POWERS" ARGUMENT

RCW 7.70.150 required a plaintiff to file not only a complaint (and copy of the summons), but also a certificate of merit or be subject to dismissal. *Putman* held this requirement unconstitutional on separation-of-powers grounds because it conflicted with Civil Rules 8 and 11. The certificate of merit requirement "addresses how to file a claim," and "changes the procedures for filing pleadings in a lawsuit." *Putman*, 166 Wn.2d at 984-85. RCW 7.70.100(1) does not impose any pleading

¹ Unlike the certificate of merit requirement, which sought to keep unsupportable malpractice lawsuits from being filed, the notice of intent requirement affords an at least 90-day window of opportunity for prospective litigants to settle potentially meritorious claims without litigation, and for prospective defendants to persuade the claimant that the claim is not meritorious or reflects a misunderstanding as to the role the prospective defendant played in the health care at issue. And, in providing for that 90-day window of opportunity to avoid litigation, RCW 7.70.100(1) protects the claimant's right of access to court by extending the statute of limitations.

requirements. Instead, it merely requires a plaintiff to mail a notice and then wait 90 days before filing suit. It has no effect on what a plaintiff must file by way of pleadings in order to start a personal injury lawsuit. Accordingly, there is no basis under *Putman* to invalidate RCW 7.70.100(1) on “separation of powers” grounds.

III. CONCLUSION

Contrary to what WSAJF apparently would like to think, *Putman* does not declare personal injury liability or personal injury litigation “hands off” to legislation. Nor does *Putman* establish a framework for invalidating statutes that confer substantial benefits on the litigants and the public without unduly burdening the ability of litigants to avail themselves of court procedures. This Court should decline to expand the holding in *Putman*, should decline to accept amicus WSAJF’s proposed reasons for holding RCW 7.70.100(1) unconstitutional, and should affirm the trial court’s order dismissing the Cunninghams’ complaint due to noncompliance with the notice of intent requirement in that statute.

RESPECTFULLY SUBMITTED this 10th day of February, 2010.

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BY RONALD R. CARPENTER CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury under the laws of the State
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of Washington that on the 10th day of February, 2010, I caused a true and
correct copy of the foregoing document, "Joint Answer of Respondents
MultiCare Health System, Inc., d/b/a Covington MultiCare Clinic, Nicol,
and Valley Radiologists, Inc., P.S., to Supplemental Brief of Amicus
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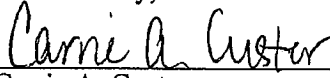
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